

NOTICE OF PROPOSED REGULATIONS

California Code of Regulations Title 15, Crime Prevention and Corrections Department of Corrections and Rehabilitation

NOTICE IS HEREBY GIVEN that the Secretary of the Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Section 12838.5, Penal Code (PC) Section 5055, and the rulemaking authority granted by PC Section 5058 in order to implement, interpret and make specific PC Section 5054, proposes to amend and adopt Sections 3043.1, 3043.7, 3327, and 3328 of the California Code of Regulations (CCR), Title 15, regarding 45-day requirement for notification local law enforcement authorities prior to the release of certain offenders.

PUBLIC HEARING:

Date and Time: March 6, 2006, 11:30 a.m. to 1:00 p.m.
Place: Resources Agency Auditorium
1416 Ninth Street
Sacramento, CA 95814
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period will close March 6, 2006 at 5:00 p.m. Any person may submit public comments in writing (by mail, fax, or e-mail) regarding the proposed changes. To be considered by the Department, comments must be submitted to the CDCR, Regulation and Policy Management Branch, P.O. Box 942883, Sacramento, CA 94283-0001; by fax at (916) 358-2636; or by e-mail at RPMB@cdcr.ca.gov before the close of the comment period. The hearing site identified above is accessible to mobility impaired individuals.

CONTACT PERSON:

Please direct any inquiries regarding this action to:

**Timothy M. Lockwood, Chief,
Regulation and Policy Management Branch
Department of Corrections and Rehabilitation
P.O. Box 942883, Sacramento, CA 94283-0001
Telephone (916) 358-1655**

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

**Ann Cunningham
Regulation and Policy Management Branch
Telephone: (916) 358-1655**

Questions regarding the substance of the proposed regulatory action should be directed to:

**Janet Rodriguez, Chief
Case Records Services
Telephone: (916) 445-9652**

LOCAL MANDATES:

This action imposes no mandates on local agencies or school districts, or a mandate that requires reimbursement pursuant to Government Code Sections 17500 through 17630.

FISCAL IMPACT STATEMENT:

- Cost or savings to any state agency: *None*
- Other non-discretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS:

The Department has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:

The Department has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES:

The Department has determined that the proposed regulations may not affect small businesses. It is determined that this action has no significant adverse economic impact on small business because they are not affected by this change in the internal management of state prisons.

ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION, OR EXPANSION:

The Department has determined that the proposed regulation will have no affect on the creation of new or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES:

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The Department has prepared, and will make available, the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains these items and all information on which the proposal is based (i.e., rulemaking file), will be made available to the public upon request directed to the Department's contact person. The proposed text, ISOR, and the Notice of Proposed Action will also be made available on the Department's website at <http://www.cdcr.state.ca.gov>.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the final statement of reasons may be obtained from the Department's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this notice. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Effective July 1, 2005, the Youth and Adult Correctional Agency (YACA), which consisted of the California Department of Corrections (CDC), the California Youth Authority (CYA), the Board of Prison Terms, the Board of Corrections, the Youth Authority Board, and the Narcotic Addict Evaluation Authority was abolished and reorganized into the Department of Corrections and Rehabilitation.

Government Code (GC) Section 12838(a) creates the CDCR, headed by a secretary.

Penal Code (PC) Section 5000 provides that commencing July 1, 2005, any reference to the Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations.

PC Section 5050 provides that commencing July 1, 2005, any reference to the Director of Corrections, in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

PC Section 5054 provides that the supervision, management, and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the director. Commencing July 1, 2005, the supervision, management and control of the state prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR.

PC Section 5058 authorizes the Director to prescribe and amend regulations for the administration of prisons.

- The amended provisions of PC Sections 3058.6 and 3058.9 alter a preexisting obligation to report inmate release to local authorities. In order to meet this new notification requirement applied to certain offenders, the Department must now ensure that advancing a qualifying inmate's release date through credit restoration does not circumvent the statutory time frame for such notification. However, while the statutes in question plainly prohibit the Department from administratively restoring credits if the restoration would deny 45 days notice, no additional authority to prohibit credit restoration at any point prior to 45 days from the scheduled release date has been specifically provided. Additionally, inmates shall not be placed in a greater credit earning category if it prevents notification to local law enforcement of the release of inmates described in Section 3327(c)(2) in the 45-day time frame.
- Reality dictates that calculating and processing credit restoration of affected violent offenders has to be cut off at some point in time prior to 45 days. In addition, because of this administrative reality, it may be that only partial credit can be provided subject inmates in order to avoid invading the 45 day mark that applies in their case. Amendments proposed are intended to create the regulatory basis for such outcomes, if circumstances so dictate. Although the earning and restoration of work incentive credits of a limited number of inmates may be thereby affected on a case-by-case basis, such an outcome is clearly in accordance with the legislature's intentions.
- Changes in subsection 3043.1(e) are needed to ensure that any subject inmates' credit earning status will not change just prior to their scheduled release date, as PC Sections 3058.6 and 3058.9 necessitate. Subsections 3327(a)(2) and 3327(c) are amended for clarity to ensure proper understanding of the intent

regarding what constitutes a disciplinary-free period and to more accurately capture the substantive meaning of the text in question. Subsection 3327(c)(2) newly enables the Department to operationally establish time and procedural processes adequate for coordinating release within the time required by statute. A subsection 3327(c)(3) amendment allows case records staff up to 75 processing days when computing the release date for affected offenders at the conclusion of a credit restoration hearing. Changes in subsections 3328(b) and (c) correct an existing textual confusion regarding time frames and ensure the affected offenders are not eligible for one time credit restorations if doing so conflicts with the Department's ability to comply with the 45 day notification requirement.

- These release dates and credit restoration limitations provide staff sufficient time for planning and processing so that notification to all appropriate local law enforcement agencies can occur within the time frame now required by statute.